IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOICE OF MOTION NO. 495 OF 2005

IN

WRIT PETITION NO. 1837 OF 2005

MAITREYEE RAMESH APTE & ORS. .. PETITIONERS

Versus

THE UNIVERSITY OF MUMBAI & ORS... RESPONDENTS

Mr. J.P. Cama with Jaideep Mitra & Vimal Bhabra i/b Apte & Co. for petitioners

Mr. Susheel Mahadeshwar for respondent 1

Ms. Meena Doshi for R-2 & 3

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:- 22/12/2005

P.C.

. On 14/7/05, this court disposed of the petition by passing the following order:

> "The petitioners have approached the court with a request that respondent 1 University of Mumbai, be directed to declare the result of the Advanced Diploma in Food Science and Quality

> Control Examination held in March/April 2005. Learned Counsel appearing on behalf of the University of Mumbai submits that the result of the Advanced Diploma in Food Science and Quality Control Examination held shall be declared on or before 21st July, 2005. In view of this statement of the learned counsel for the University of Mumbai, nothing survives in this petition. This petition is accordingly disposed of."

2. Obviously it is the statement made by the learned counsel appearing for the university that result of the exams of Advance Diploma Examination in Food Science and Quality Control will be declared on or before 21st July, 2005, that this court observed that nothing survives in the petition and the petition is disposed of.

3. Thereafter the petitioners took out Notice of Motion No. 462 of 2005 praying that respondent 1 may be directed to furnish to the petitioners and respondents 4 to 7, their respective mark sheets and Certificates in Advanced Diploma in Food Science and Quality Control Examination.

4. On 2nd September, 2005, this Court recorded the statement of the learned counsel for respondents 2 and 3 i.e. Ramnarain Ruia College of Arts & Science and Dr. (Mrs.) Jyoti D. Vora, Head Dept. of Biochemistry & Food Science & Quality Control, that respondents 2 and 3 undertake to give the mark sheets and certificates to the petitioners within a week.

5. It appears that the mark sheets were handed over by the 2nd respondent to the students on 2/9/2005. It appears that these mark sheets have been issued by the university. However, the passing certificates have not been issued to them. The petitioners have, therefore, taken out the present notice of motion praying that respondent 1 be directed to issue passing certificates to them.

6. An affidavit has been filed by Mr. Prakash Wani, Controller of Examinations of the University of Mumbai, opposing the grant of relief in notice of motion. The relevant paragraphs of the affidavit may be quoted:

"4. I say that the subject of Food

Science and Quality Control was also offered by the University at the B. Sc. Degree vocational examination. I say that Mithibai College had offered the subject of Food Science and Quality Control to its students at the B. Sc. Degree vocational examination.

5. I say that it was due to confusion in the Add-on course of Advanced Diploma in Food Science and Quality Control and the Vocational subject of Food Science and Quality Control that the University mistakenly conducted the examination of the Add-on Course at the respondent No. 2 college.

6. I say that around 51 colleges had offered Add-on courses to their students and the examinations to the said courses were conducted by the Colleges themselves. Hereto annexed and marked Exhibit "b" is a copy of the List of Colleges which had offered Add-on courses. At Exhibit ’C’ is annexed by way of example a copy of the Certificate

issued by Vivekanand Education Society's College of Arts, Science and Commerce for the Add-on-Course of Fashion Designing."

7. From the above averments is it clear that the examination of Advanced Diploma in Food Science and Quality Control was conducted by the respondent university due to confusion. It is further stated in the affidavit that show cause notices dated 23/9/05 have been issued to Mr. Dilip N. Jadhav, Superintendent, Results Unit (Science), Smt. Reema A. Thakur, Head Clerk Results Unit (Science) and Nitin N. Samant, Junior Clerk Results Unit (Science) and investigation is being conducted to find out as to who is responsible for issuing mark sheets to the students. The stand of the respondent university appears to be that since the respondent university has conducted the examination by mistake, they are not liable to issue passing certificates to the students.

8. If as contended by the respondent university it has conducted this examination by mistake, we fail to understand as to how a statement came to be made before this court that the result of the examination will be declared by the University. It

may be that the university has conducted the examination because of some confusion. It may be that the university is conducting investigation and trying to find out as to who is responsible for the issuance of mark sheets. However, because of this we cannot allow the students to suffer. If the university has conducted the examination, if the university has declared the results, then as one time measure they must issue passing certificates in this case particularly because it is not disputed by the learned counsel for the university that the mark sheets are correct. We also fail to understand as to how the learned counsel for respondents 2 and 3 gave undertaking to this court on 2/9/05 that respondents 2 and 3 shall issue mark sheets and certificates to the petitioners within a week. We do not want to express any opinion on this at this stage, since the investigation is in progress We are sure that, if there is any fraud those who are responsible for it will be adequately punished.

9. In the circumstances of the case and considering the interest of the students, we direct the respondent university to issue passing certificates to the students. The certificates be

issued within a period of two weeks. We make it clear that this order is passed in the peculiar facts and circumstances of the case and only as one time measure in the interest of students to prevent any hardship which may be caused to them on account of admitted mistake committed by the respondent university.

10. We make it clear that we have not expressed any opinion on the question whether the university is obliged to take examination of Adhoc Advanced Diploma in Food Science and Quality Control in future. We leave that question open.

11. Notice of Motion is disposed of.

12. Parties to act on authenticated copy of this order.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)